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PUBLIC UTILITIES  
BOARD OF PUBLIC UTILITIES

Regulations of Cable Television  
Complaint Recording and Reporting  
Adopted New Rule: N.J.A.C. 14:18-6.7

Proposed: March 1, 2004 at 36 N.J.R. 1178(a)

Authorized by: Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Commissioner; Carol J. Murphy, Commissioner, Connie O. Hughes, Commissioner and Jack Alter, Commissioner)

Filed: \_\_\_\_\_, 2004, as R. \_\_\_\_ d. \_\_\_\_\_, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 48:5A-10

BPU Docket Number: CX04010007  
Proposal Number: PRN 2004-77

Effective Date: October 18, 2004  
Expiration Date: December 27, 2006

BPU Docket Number: CX04010007

The purpose of this rulemaking is the adoption of a new rule regarding the collection, recording and reporting of customer complaints by the State's cable television companies.

The notice of proposed rulemaking was published in the New Jersey Register on March 1, 2004 at 36 N.J.R. 1176(a), which included a public hearing held on March 29, 2004. Notice of the hearing was published in nine daily newspapers whose general circulation covers the State. In addition, all cable television operators and interested parties listed with the Office of Cable Television (OCTV) under N.J.A.C. 1:30-5.2(a)3 were mailed a copy of the hearing notice. Written comments were accepted through April 30, 2004. The proposal was discussed and approved for adoption at the Board's September 8, 2004 public meeting.

**Summary of Hearing Officer Recommendation and Agency Response**

The public hearing was held on Monday, March 29, 2004 at the Offices of the Board of Public Utilities in Newark, New Jersey. Two persons offered testimony at the public hearing: Ava Marie Madeam, Division of Ratepayer Advocate (DRA) and Karen Alexander, New Jersey Cable Telecommunications Association (NJCTA). Commissioner Jack Alter served as hearing officer. The hearing officer recommended that this rule action proceed to adoption. Two commenters submitted written comments during the public comment period: the NJCTA and the DRA.

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A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Board of Public Utilities  
Office of the Secretary  
Attn: Docket No. CX04010007  
Two Gateway Center  
Newark, NJ 07102

**Summary** of comments received at the public hearing and in writing and Agency response:

Comment: The NJCTA contends that the Board lacks the authority to compel cable television operators to procure blanket government access to complaint-related personally identifiable information. Federally, personally identifiable information can only be released by obtaining a court order and granting the subscribers an opportunity to contest the claim to the information. The NJCTA believes that the Board does not have the authority to compel the State's cable television industry to seek a blanket waiver from its subscribers to disclose personally identifiable information. Nothing in federal law authorizes a franchising authority to require a cable television operator to obtain advance blanket consent for access to customer personally identifiable information.

Response: The Board disagrees with the NJCTA's interpretation. The Board is not compelling any cable television company to release information that a subscriber has not agreed to be released. The subscriber has the option to choose to release his or her personal information. If the subscriber does not agree to the release of the information, the cable television operator must take all steps to protect the personally identifiable information of that subscriber. However, if the subscriber decides not to release his or her information, this does not relieve the cable television operator from submitting the complaint data on the subscriber without the personally identifiable information. In addition, the consent sought is only in the event that the subscriber files a complaint with the cable television company. If the subscriber does not do so, his or her personally identifiable information would not be released in any case.

Comment: The NJCTA contends that the bill upon which the proposed rule is premised, S. 668, enacted as N.J.S.A. 48:5A-26.1, does not require the Board to seek blanket disclosure of personally identifiable information. The NJCTA believes that the language of N.J.S.A. 48:5A-26.1 mirrors closely the language of N.J.A.C. 14:18-6.5, which requires every cable television company to maintain for a period of one year "a record of complaints in regard to service received at its office or offices, which shall include the name and address of the customer, the date, the nature of the complaint, the test conducted and the corrective action taken if required, and the final disposition." Furthermore, the disclosure language of both is identical and requires that the record be available for inspection by staff of the OCTV and that copies be provided to the OCTV upon request. The NJCTA states that the Board has never interpreted this language to require advance blanket consent for the disclosure of personally identifiable information. Instead, cable television operators have provided personally identifiable information only for subscribers who have filed complaints directly with the OCTV and therefore consented implicitly to the disclosure of the data.

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Response: A major concern of the Board is the enforceability of the statute and the rule. The Board needs a means to verify the accuracy of the information submitted; otherwise, the reports may leave open questions as to compliance. Accordingly, the Board established, by interim orders, and subsequently in the proposed and herein adopted rule, a mechanism for such verification that would be consistent with the State and federal privacy statutes covering cable television service. This would be accomplished by review of the records for which a waiver was obtained from the customer. The Board believes that in any event, only a limited amount of personally identifiable information would be needed for verification: name, phone number, nature of complaint and satisfaction or dissatisfaction with resolution. The Board agrees with the NJCTA that neither N.J.A.C. 14:18-6.5 nor this rule require blanket disclosure of personally identifiable information. The purpose of seeking permission from subscribers for the release of personally identifiable information is only in the event that a subscriber files a complaint with the cable television operator, which is subsequently made available to the Board upon a request for inspection or copies of complaints by the staff of the Board or the OCTV. N.J.A.C. 14:18-6.7(g) only requires the State's cable television operators to file a yearly detailed report on the number and character of complaints made by customers during the previous year. The rule does not require the cable television operator to file each complaint received by the cable television operator with the Board, nor does the rule require the cable television operator to file the subscriber's personally identifiable information in the yearly report. Only upon request of the staff of the Board or the OCTV would a cable television company be required to submit the complaints to staff or allow staff to review the complaints with the personally identifiable information intact, where permission has been granted by the subscriber. In addition, the Board believes that to the extent this language mirrors N.J.A.C. 14:18-6.5, this requirement provides additional protections that may have been lacking in the existing rule.

Comment: The NJCTA contends that blanket disclosure is inconsistent with cable subscribers' statutory right to privacy since State and federal law impose detailed restrictions on the collection and disclosure of subscriber personally identifiable information by cable operators. 47 U.S.C. § 551; N.J.S.A. § 48:5A-55 through 57. The NJCTA believes that no other industry regulated by the Board is subject to such specific statutory strictures regarding information about its customers as is cable television. The underlying purpose of State and federal cable television privacy statutes is the protection from disclosure and improper use of personally identifiable information about individuals. The advance blanket consent sought by the BPU is inconsistent with this important goal.

Response: The Board is in agreement with the NJCTA that a waiver of a subscriber's rights to privacy in all circumstances could violate State and federal subscriber privacy cable television statutes. However, the Board is not requesting cable television companies to collect this information in a format that may be reviewed and/or submitted to the Board absent a complaint being filed by the subscriber. Only in the event that a subscriber files a complaint with the cable television operator and has agreed to release of his or her personally identifiable information for that purpose only would the waiver become relevant.

Comment: The NJCTA contends that the Board's proposal is an unnecessary intrusion into subscriber privacy. The Board's proposal requires advance blanket authorizations to release

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personally identifiable information that is unnecessarily broad. The NJCTA contends that Board staff only needs access to personally identifiable information when a subscriber brings his or her complaint to the Board, and these subscribers should be willing to provide specific authorization if they want the Board to follow up on their complaints. The NJCTA believes that if a cable television company has resolved a complaint, there is no justification for releasing the associated personally identifiable information to the Board if the customer has not sought the Board's assistance.

Response: As noted above, it is only in the event that a subscriber files a complaint with the cable television company and has agreed to the release of his or her personally identifiable information that the waiver would be relevant. Even then, it is only upon request of staff of the Board or the OCTV that any of the personally identifiable information would then be released to anyone other than the individual and cable television company staff.

Comment: The NJCTA contends that blanket disclosure of personally identifiable information to the Board is unworkable and likely to discourage customer consent. The NJCTA believes that in order to ensure that subscribers knowingly consent to disclosing their personally identifiable information to the Board, a blanket advance consent request would need to anticipate virtually every circumstance and category of personally identifiable information that might be divulged to the Board in connection with complaints. For example, because customer complaints may arise due to concerns associated with reception of particular services, fulfillment of a pay-per-view or video-on-demand transaction, or a subscriber's payment record or pattern, customers would have to be informed, among other things, that consenting to the Board's request could result in the disclosure of viewing habits and choices, transactional information, and credit-related data. In order to ensure that the consent obtained is knowing, and informed, the required breadth of an advance request for blanket consent is likely to discourage customers from consenting. If consent is provided on a case-by-case basis, however, rather than in the advance blanket form required by the rule, customers can be fully informed of the extent of the personally identifiable information sought based upon the facts in existence giving rise to the need for such disclosure.

Response: The Board agrees that it may not be necessary for a subscriber to release the entirety of its personally identifiable information in order for the Board to examine whether cable television companies are complying with the rule. However, the Board does not believe that most subscribers will have a concern with this as they have authorized the release of their information and the customer has filed the complaint; however, if such a concern does exist, they can decline to grant the release of their information that has no bearing on their receipt of service from the cable provider.

Comment: The NJCTA contends that the proposed rule would adversely affect customer goodwill and impose unnecessary and costly new burdens on cable operators in that it requires each cable television company to ask every new customer for a blanket consent for disclosure of their personally identifiable information "as part of the process of taking the necessary information" for the new account. The NJCTA contends that the fact that only cable television operators and not DBS providers are subject to this requirement could lessen cable television's attractiveness to new customers. Even if a customer does provide such consent during this first interaction, there is a risk of further ill-will and customer defections in the future if it is found how

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the information is used. In addition, the proposal creates a costly and burdensome new record-keeping requirement for cable operators, which can put upward pressure on cable rates while providing no offsetting benefits.

Response: As noted above, there is no requirement that a subscriber grant his or her consent to the release of the information. The Board does not believe that asking a potential customer something to the effect, "In the event that you file a complaint with us, may we share the details of your complaint, including your name and address, with the Office of Cable Television upon their request?" is a significant monetary or record-keeping burden on the cable television industry. In addition, the NJCTA provided no supporting information on the cost of complying with this provision.

Comment: The NJCTA contends that depriving cable television operators of control over the content of the subscriber notice increases the risk of violating cable subscribers' privacy rights. The proposed rules require cable operators to "obtain the approval of" OCTV for the content of the consent notice provided to subscribers. Because OCTV, unlike a cable operator, is not subject to liability under the federal cable privacy law, it lacks the operator's strong incentive to craft a notice which ensures that any consent obtained is knowing and informed. Ceding control over the content of the customer notice to OCTV heightens the risk that subscriber privacy rights will be violated by the failure to obtain consents that are knowing and informed.

Response: The Board disagrees. The Board believes that it must at least determine that the notice is not designed to discourage participation by the subscriber. Therefore, the Board believes it must review and approve the content of the consent notice.

Comment: The NJCTA contends that the rule fails to address how, once in the possession of the BPU, customers' personally identifiable information will be protected and its use restricted. Once submitted to a public agency, customers' personally identifiable information loses the protections afforded it by law when in the possession of the cable television operator. Cable television operators have no means of protecting customers' information once submitted to the Board, and as a public agency, the extent to which the Board can protect that information may be limited. The rule should be clear as to the limits of the use of customers' personally identifiable information and specify measures that will be implemented to ensure that customers' information is not inadvertently disclosed.

Response: The Board agrees that adequate protections must be afforded to prevent the accidental or intentional release of this information once it is in the possession of the Board. The Board believes that the protections afforded under the State and federal privacy acts will allow the individual subscribers' personally identifiable information submitted by cable television operators to remain private. Under federal and State law, except under limited circumstances, cable companies are required to obtain consent from a customer to release personal information, and must notify the customer of the nature of the use to be made of the information and the purpose of any disclosure of the information, and must identify the types of persons to whom disclosure may be made. See 47 U.S.C. 551; N.J.S.A. 48:5A-54 *et seq.* New Jersey's Cable Subscriber Privacy Protection Act further provides at N.J.S.A. 48:5A-57(d), that any third party, in this case the Board, that receives personally identifiable information from a cable

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television operator may only use that information for "the purposes for which the disclosure is made." Consistent with these federal and State provisions, the Board will not release personally identifiable cable subscriber complaint information that it receives from cable companies, unless it is authorized to do so by the cable customer's consent.

Comment: The NJCTA urges the Board to revise the proposed rule to eliminate the requirement for advance blanket consent from subscribers to the release of personally identifiable information. The NJCTA believes that it is possible to modify the rules such that the Board's need to ensure full and proper implementation of S. 668 can be achieved without impinging on the very carefully crafted cable customer privacy protections of State and federal law.

Response: The Board disagrees. The Board believes that the cable television operators must seek the approval of its cable television customers for the release of their personally identifiable information in the event that they file a complaint with the cable television operator. The waiver will allow Board staff to review these complaints upon an indication of a pattern of complaints and verify with the individual subscriber that the complaint was resolved to their satisfaction.

Comment: The DRA commented that it commends the Board and the OCTV for the proactive steps it is taking to identify service problems experienced by cable television customers in addition to ensuring that complaints made by cable television customers are being appropriately addressed by cable television operators.

Response: The Board notes the DRA's comment.

Comment: The DRA commented that the complaint information submitted by the cable television operators will enable the Board and OCTV to gauge whether cable television operators in New Jersey should be subject to increased service quality standards if complaints of poor service continue to increase.

Response: The Board agrees that the submission of complaint statistics will enable the Board to determine whether new customer service standards are necessary.

Comment: The DRA recommended that while it is generally supportive of proposed new rule, some revision to the rule is necessary to make it more effective in achieving its goal of ensuring customers' complaints and of targeting customer complaints and working to help resolve them. First, the DRA recommends that the customer complaint data submitted to the Board by cable television operators must not be limited to cable television services but should also include cable modem and cable telephony services. Cable modem and cable telephony are relatively new service offerings of cable television operators, and the Board must be equally aware of the complaints made by customers of these services and make efforts to resolve them.

Response: The Board declines to modify the rule because the Board believes that to the extent that such complaints submitted to the cable television operator may be rooted in cable television

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service problems such as problems in cable television distribution plant or a billing dispute, and will ultimately be reported in the complaint data submitted to the Board, a significant number of telephone and modem complaints, will be covered by existing complaint categories. Thus, no changes to the rule are necessary at this time.

Comment: The DRA recommended that cable television operators provide cable television customers with notice stating that their consent is required for the release of personally identifiable information to the Board prior to the effective date of the new rule.

Response: The Board believes that this is moot at this point because this is an adoption notice and by the time this notice is published, the rule will be effective and the prior orders issued by the Board required the State's cable television operators to start notifying their subscribers of the requirements of the statute.

Comment: The DRA recommended that cable television operators should be required to submit complaint data to the Board on a monthly basis instead of on an annual basis. This will allow the Board to identify recurring complaints and take steps to quickly resolve them.

Response: The language of the statute does not specifically provide for submission of the complaint data on a monthly basis and the Board does not see any reason to require it. If the Board were to determine that there was a pattern of complaints with a particular cable television company, it could require that the cable television company submit complaint statistics more frequently, but the Board has no reason to compel it at this time.

Comment: The DRA further recommended that cable television operators should be required to submit the monthly and annual reports on complaints to the DRA because they are statutorily mandated to represent and protect the interests of all consumers in New Jersey, and in this capacity, the DRA should also receive this data in order to ensure that the complaints of cable television customers are being adequately addressed by the cable television operators and to assist the Board in rectifying these complaints.

Response: The language of the statute does not specifically provide for submission of the complaint statistics to the DRA and therefore the Board declines to make this change. However, to the extent allowable by the subscriber privacy protections of state and federal law, the DRA may request these statistics from the Board.

Comment: The DRA commented that New Jersey ratepayers will greatly benefit from this new rule because it will require the identification and reporting of all customer complaints regarding the services received from cable operators. In addition, these reports will determine whether additional service quality standards are needed.

Response: The Board agrees that New Jersey ratepayers will benefit from this new rule because it will determine where cable television operators are excelling and where work may need to be done, including the possibility of additional service quality standards.

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After the close of the comment period, staff of the OCTV met with the cable television industry to determine the best possible way to implement this rule to insure compliance with the statute while still taking into consideration the cable industry's concerns about administration of how complaints can and will be registered and filed. Therefore, the Board sent staff to review how cable television companies register complaints. Board staff also reviewed how other state cable commissions monitor their cable television companies. Board staff's findings indicated that cable television companies track complaints differently from the OCTV and from each other. In addition, even in the manner of what defines a complaint is subjective. Staff has found that cable television companies generally do not consider a customer calling to express dissatisfaction with services or products received or rendered a complaint if the cable television operator can resolve the problem without intervention of the OCTV. The Board disagrees with this interpretation. The Board believes that if a customer contacts the company in any manner to express discontent or dissatisfaction with something that the cable television operator did or did not do, or offers or does not offer, this should be considered a complaint.

Furthermore, the cable television industry believes that the Board should not include complaints which they deem outside the cable television operator's control, such as programming, nor does the industry believe that these "complaints" should be included in the Board's tabulated yearly statistics. The Board disagrees. The Board believes that most issues are within the cable television operator's control, including programming. While the cable television operator cannot choose what programming is on a particular channel, it can choose what channels it puts on its system. In addition, pursuant to 47 U.S.C. § 544 (h)(2), cable television operators may be required to inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority. The Board's OCTV does not currently require the cable television industry to notify its subscribers of this, but believes that programming is a sufficiently important enough category to both the federal and State government to warrant its inclusion as a recorded complaint by the cable television industry. Therefore, because of all of the above reasons, the Board has determined it necessary to concurrently propose a definition for the term "complaint." The Board believes the proposal will resolve the issues regarding the complaint definition raised by the cable television industry subsequent to the close of comment period.

Also discussed in meetings with the cable television industry was the form on which the cable television industry should collect the complaints. The statute and the rule to be adopted herein (N.J.A.C. 14:18-6.7(g)) requires cable television operators to furnish to the OCTV annually on a form prescribed by the Director, a detailed report on the number and character of complaints made by customers and communicated to the cable television company during the previous year which shall require information containing those matters that the director of the OCTV may from time to time prescribe. In general, however, the form will contain categories of complaints such as: advertising/marketing; appointment service call; billing; rates; customer service; defective notice; equipment; installation; service availability; programming; reception; service interruption; unable to contact; failure to respond to original complaint; and other. These categories will be explained in greater detail on the form. Cable television operators will be expected to file complaints on a local cable television system level and keep complaints current to the month and quarter, although reporting is only required annually. A set of forms, along with a full explanation of the method of filing and reporting will be sent to each cable television



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operator.

The Board notes that additional language has been added upon adoption to subsections (b)1 and (b)3 for the purpose of ensuring consistency in the manner in which the cable television operator seeks consent for the release of personally identifiable information from both new subscribers and existing subscribers. In subsection (b)1, language has been added upon adoption to clarify the manner in which the cable television operator must seek consent for release of the subscriber's personally identifiable information when enrolling a new subscriber. The language has been clarified to require that the cable operator must seek this consent in writing through a written notice, and that the notice is equivalent to the annual notice provided to existing customers for the same purpose described in subsection (b)2.

This clarification ensures that new subscribers will be fully informed regarding the consent that the cable operator is seeking from them, and that the notice provided to new subscribers will be consistent with the written annual notices received by existing customers for the same purpose. Similarly, subsection (b)1 is also amended upon adoption to require that cable television companies document the consent of the new subscriber for the release of their personally identifiable information in writing, to remain consistent with the documentation required for the same purpose from existing customers in subsection (b)2. The Board does not believe the language added upon adoption will create a regulatory burden for cable television operators, since they are currently required under 47 U.S.C. § 551 to provide written documentation of the federal subscriber privacy rules to new subscribers. In addition, under prevailing industry practices, all cable television operators obtain the signature of the subscriber at the initiation of service on a work order.

Subsection (b)3 is also clarified upon adoption to indicate that the written notices used for new subscribers must, like those used for existing subscribers, be submitted to the Board for approval. It is expected that cable television operators will use identical written notices for both new and existing customers, as the most cost effective method for compliance. Therefore, this modification of the rule upon adoption does not represent a substantial increase in the burden or cost of compliance. It will, however, serve to provide important protections for subscribers regarding the release of their personally identifiable information.

### **Executive Order No. 27 Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 14:18-6.7 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for this proposal.

**Full text** of the new rule appears in the Administrative Code at N.J.A.C. 14:18-6.7.

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**Full text** of the amendments follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

14:18-6.7 Complaint recording and reporting

(a) (No change.)

(b) Each cable television company shall seek, collect and document consent from each customer for the release of personally identifiable information, as defined by N.J.S.A. 48:5A-55(d), to the Board and to the Office, as follows:

1. Upon a new request for service, the cable television company shall \*provide an initial written notice\* seek\*ing\* the customer consent required under this subsection \*[as part of the process of taking the necessary information for the account]\* \*such consent shall be confirmed in writing\*;

2. (No change.)

3. The cable television company shall obtain the approval of the Office for the \*written initial and annual\* notice\*s\* required under this subsection prior to sending the notice to customers; and

4. (No change.)

(c) - (i) (No change.)